

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMV 19-2022

CHAPTER 735

DEPARTMENT OF TRANSPORTATION

DRIVER AND MOTOR VEHICLE SERVICES DIVISION

FILED

12/20/2022 7:04 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Secure Forms: Odometer Disclosure and Secure Power of Attorney

EFFECTIVE DATE: 12/21/2022 THROUGH 06/18/2023

AGENCY APPROVED DATE: 12/20/2022

CONTACT: Ty Yoder
503-945-5256
ty.m.yoder@odot.oregon.gov

DMV Program Services
1905 Lana Avenue NE
Salem, OR 97314

Filed By:
Lauri Kunze
Rules Coordinator

NEED FOR THE RULE(S):

DMV is experiencing ongoing supply issues related to the availability of the carbon copy (multi-copy) paper needed to produce DMV's Secure Power of Attorney form (DMV Form 402) and Secure Odometer Disclosure/Reassignment form (DMV Form 403). To ensure continued availability of these forms, DMV is amending its rule to permit the use of a more sustainable single-copy format that retains required security features, while continuing to permit the use of forms with the multi-copy format.

DMV must amend its rules to provide the new form number and to authorize secure forms agents to purchase and sell Secure Power of Attorney and Secure Odometer Disclosure/Reassignment forms that meet or exceed federal requirements from a person approved by DMV when DMV's vendor is unable to provide secure forms in a timeframe sufficient to meet operational needs. The new rule also states that DMV will not reimburse the secure forms agent for any unused secure forms purchased from a person that is not DMV's vendor.

JUSTIFICATION OF TEMPORARY FILING:

DMV's failure to act promptly will result in serious prejudice to the public interest. DMV's vendor has distributed the last batch of forms the vendor had available. DMV anticipates this supply will be exhausted within a month and then there will not be any more forms available to dealerships, credit unions, banks and others as required by state and federal law to complete an Oregon vehicle transaction during a transfer of ownership. This temporary rule will enable secure forms agents and DMV to initiate urgent procurement and approval processes to obtain alternative forms and prevent or minimize this impending secure form shortfall.

DMV's failure to adopt and amend these rules will prevent certain vehicle sales transactions from occurring. Prevention of vehicle sales may disrupt the ability of some Oregonians to acquire reliable transportation. It would also hinder vehicle dealership sales to Oregon residents, thereby negatively impacting sales employees who work on commission in addition to the dealership themselves. Secure forms agents will also lose revenue because they will be selling fewer forms.

Adopting and amending these rules will alleviate the potential consequences because secure forms agents will be able to obtain forms from either DMV's vendor or another person when DMV's vendor is unable to supply forms. The alternative form option provided in this temporary rulemaking will prevent or mitigate a transaction and business disruption for dealerships, credit unions, banks and others who need the forms to transfer ownership and apply for Oregon vehicle titles.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

RULES:

735-028-0080, 735-028-0110, 735-028-0125, 735-028-0160

AMEND: 735-028-0080

RULE SUMMARY: DMV is updating this rule to include DMV's new single page secure form (735-402A). DMV is also making other changes to the language as a result of the new form.

CHANGES TO RULE:

735-028-0080

Odometer Disclosures - Power of Attorney Between the Buyer and Seller - Filings with the State ¶

(1) A person may sign an odometer disclosure as both the buyer and seller by power of attorney only when allowed under OAR 735-028-0060.¶

(2) When a seller gives a power of attorney to the buyer for the purpose of making an odometer disclosure, the form used shall be the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) "Secure Power of Attorney," Form 735-402, DMV's "Secure Power of Attorney," Form 735-402A, or a secure form issued by another state that conforms to federal rules (49 CFR, Part 580). ~~All of the following apply to such forms:¶~~

~~(a) P¶~~

~~(3) DMV does not accept secure power of attorney forms for use in making odometer disclosures that are photocopies, facsimiles, digitized copies or other reproductions of such forms are not acceptable for use in making odometer disclosures. This section does not prevent persons from making copies of completed forms, such as for their records;¶~~

~~(b4) Oregon DMV's sSecure pPower of aAttorney form, Form 735-402, and the secure forms of some other states, are multi-copy forms, each copy of which is a secure form. When used as intended, completion of the original power of attorney will result in the other copies being completed with the same information. Such copies shall be acceptable for submission to the state as otherwise provided in this rule.¶~~

~~(35) A seller who grants power of attorney under section (2) of this rule, shall complete Part A of the secure power of attorney form, including the seller's printed and written signature and all other information required to be part of an odometer disclosure, as covered in OAR 735-028-0050.¶~~

~~(46) A buyer who receives power of attorney under section (2) of this rule shall print and sign his or her name in Part A of the secure power of attorney form and return one provide a copy of the form to the seller.¶~~

~~(57) Upon receipt of the seller's title, the person granted the power of attorney shall determine whether the mileage disclosed on the power of attorney is less than the mileage shown on the title:¶~~

~~(a) If the mileage disclosed on the power of attorney is greater than the mileage shown on the title, the person may use the power of attorney to make the required disclosure:¶~~

~~(A) If the title is a conforming title, the person shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed on the power of attorney;¶~~

~~(B) If the title is a non-conforming title, the power of attorney form itself may be considered the disclosure, and the person need not complete a separate state-issued disclosure form.¶~~

~~(b) If the mileage disclosed on the power of attorney is less than the mileage shown on the title, and there is no indication from the seller on Part A of the power of attorney that the mileage has exceeded the mechanical limits of the odometer or that the mileage is not actual, the power of attorney is void for the purpose of making an odometer disclosure. In this case, the person granted the power of attorney shall not make the disclosure on the title and shall obtain a new disclosure from the seller. This subsection shall not apply if it is determined that DMV~~

or another state made an error in recording the mileage on the title, and that the actual mileage reported and which should have been shown on the title was less than that reported on the power of attorney.¶¶

(68) If the person who is granted power of attorney under section (2) of this rule resells the vehicle prior to receipt of the title, and if the new buyer elects to grant power of attorney to that person for the purpose of making an odometer disclosure, the exact power of attorney form that was completed under sections (2) through (46) of this rule shall be used. In granting power of attorney under this section, the new buyer:¶¶

(a) Grants authority for the seller to sign all papers and documents required to secure title on the buyer's behalf;¶¶

(b) Grants authority for the seller to make the odometer disclosure on the title, only if the disclosure is exactly as completed on the power of attorney; and¶¶

(c) Acknowledges that the buyer is aware of the odometer disclosure made under Part A of the power of attorney form the buyer is signing.¶¶

(79) When power of attorney is granted under section (68) of this rule:¶¶

(a) The seller who is granted power of attorney shall complete Part B of the secure power of attorney form, including the seller's ~~printed and written~~ signature and all other information required to be part of an odometer disclosure, as covered in OAR 735-028-0050;¶¶

(b) The new buyer shall ~~print and sign his or~~ sign their name in Part B of the power of attorney;¶¶

(c) The seller shall provide a copy of the completed power of attorney to the buyer;¶¶

(d) Upon receipt of the title, the person who is granted power of attorney shall comply with the provisions of section (57) of this rule; and¶¶

(e) If the title is a conforming title, and the power of attorney is not void and is being used to make a disclosure under both Parts A and B of the power of attorney form, the person granted the power of attorney shall also complete Part C of the power of attorney form. Part C of the power of attorney includes, but shall not be limited to:¶¶

(A) The signature, printed name and address of the person exercising the power of attorney;¶¶

(B) A certification that the person has disclosed the mileage on the title as it was disclosed on the power of attorney, that the person has examined the title and any reassignment documents, and that the examination indicated the mileage disclosed on the power of attorney is greater than that shown on the title and any reassignment documents;¶¶

(C) The date of the certification.¶¶

(810) A person who is granted and who exercises a power of attorney under this rule shall complete the required odometer disclosure(s) on the title when received. The person shall provide an original power of attorney or one of the secure copies of a multi-copy form to:¶¶

(a) The Oregon DMV, along with the title and any other requirements, if that person is applying for title in ~~his or~~ their name or on behalf of the new applicant; or¶¶

(b) Whomever that person provides the title.¶¶

(911) A person who is granted and who exercises a power of attorney under this rule and who does not apply for title in ~~his or her~~ their name or on behalf of the new applicant (e.g., title and power of attorney given to new buyer) or who applies for title in a state other than the state that issued the power of attorney form, shall in addition to complying with section (810) of this rule, make a separate odometer disclosure filing in the state that issued the power of attorney form. All of the following apply to such filings:¶¶

(a) The filing shall be made to the Oregon DMV if filed in Oregon, or to the equivalent agency if filed in another state;¶¶

(b) The laws and regulations of the state in which the documents are being filed shall apply (e.g., requirements for filing and any fee); and¶¶

(c) To comply with Federal rules and Oregon rules and statutes, filings required under subsection (911)(a) of this rule to be made to the Oregon DMV:¶¶

(A) Shall include at least a copy of the front and back of the title that has been completed to show the odometer disclosure, the original power of attorney or one of the secure copies of a multi-copy power of attorney, and the \$4 filing fee required by ORS 803.126;¶¶

(B) Shall be submitted to DMV within 30 days of selling the vehicle, or if the named attorney titles the vehicle in another state, within 30 days of exercising the power of attorney on the title; and¶¶

(C) Shall not be required if the title is a nonconforming title. However, DMV shall retain power of attorney documents and fees filed when the title is nonconforming.

Statutory/Other Authority: ORS ~~184.619~~, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.126, 803.140, 803.207, 803.370, 803.475, 805.120, 815.405, 821.060, 821.080 & Ch. 873; OL 1991

Statutes/Other Implemented: ORS 803.120 - 803.124, 49 CFR Part 580

AMEND: 735-028-0110

RULE SUMMARY: DMV is updating this rule so the definitions in this rule also pertain to the terms used in OAR 735-028-0160. DMV is adding DMV's new secure forms (403A) and (402A) to the definition of secure form.

CHANGES TO RULE:

735-028-0110

Providing Secure Forms; Definitions ¶¶

As used in OAR 735-028-0110, ~~735-028-0125~~, ~~735-028-0150~~ and ~~735-028-01560~~ and any agreement entered into under ORS 803.124 and OAR 735-028-0120:¶¶

(1) "DMV" means the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.¶¶

(2) "End user" means a person ~~that~~ who buys or sells vehicles, or provides lending services for vehicles on a regular basis, including certified vehicle dealers, auto auctions, title companies and lending institutions.¶¶

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.¶¶

(4) "Secure Forms Agent" or "Agent" means a person authorized by DMV by written agreement to provide secure forms to end users under the authority of ORS 803.124.¶¶

(5) "Secure Form" means a State of Oregon Secure Odometer Disclosure/Reassignment form (DMV Form 403), State of Oregon Secure Odometer Disclosure/Reassignment form (DMV Form 403A), State of Oregon Secure Power of Attorney form (DMV Form 402) or a State of Oregon Secure Power of Attorney form (DMV Form 402A), used for the purpose of making an odometer disclosure statement as required by state and federal laws.¶¶

(6) "Service Fee" means the fee amount established under OAR 735-028-0125 that a secure forms agent may charge an end user to provide secure forms.¶¶

(7) "Vendor" means a person authorized by written agreement with the Oregon Department of Administrative Services to print, store and provide secure forms to DMV and secure forms agents.

Statutory/Other Authority: ~~ORS 184.616~~, 184.619, 802.010, 803.102, 803.120, 803.124, 803.124, 803.370

Statutes/Other Implemented: ORS 802.200, 803.045, 803.092, ~~803.045~~, 803.124, 803.126

AMEND: 735-028-0125

RULE SUMMARY: DMV is amending this rule describe the service fee amount an agent my charge when they receive the forms from a person described in OAR 735-028-0160.

CHANGES TO RULE:

735-028-0125

Fee for Providing Secure Forms ¶

An agent may charge the end user a service fee authorized under ORS 803.124 for the service of providing secure forms. A service fee may not exceed 100 percent of the agent's cost to purchase secure forms from the vendor or a person described in OAR 735-028-0160. In addition to the service fee, an agent may charge an end user the actual cost charged by the United States Postal Service or similar parcel delivery service for the delivery of secure forms. Statutory/Other Authority: ORS ~~184.616~~, 184.619, 802.010, 803.124
Statutes/Other Implemented: ORS 803.124, 49 CFR Part 580

ADOPT: 735-028-0160

RULE SUMMARY: DMV is adopting this rule to permit secure forms agents to purchase secure forms from a person who is not the vendor in certain instances.

CHANGES TO RULE:

735-028-0160

Secure Forms Limited Availability

(1) A secure forms agent may purchase secure forms that meet or exceed federal requirements for form and content from a person who is not the vendor when:

(a) The secure forms agent has submitted a purchase order for new secure forms to the vendor;

(b) The vendor notifies DMV and the secure forms agent that the vendor is unable to provide secure forms in the amount requested to the secure forms agent; and

(c) DMV approves the secure form the person is providing to the secure forms agent.

(2) A secure forms agent may sell the secure forms purchased in accordance with section (1) of this rule to end users only during the period in which the vendor is unable to provide secure forms to the agent.

(3) A secure forms agent must provide DMV with a copy of the purchase order between the secure forms agent and the person described in section (1) of this rule upon request of DMV.

(4) DMV will not reimburse the secure forms agent for any unused secure forms purchased by the secure forms agent from a person described in section (1) of this rule.

Statutory/Other Authority: ORS 184.619, 802.010, 803.124, 49 CFR §580.3

Statutes/Other Implemented: ORS 803.124